

offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Shipping Act of 1984 and the rules of this part.

(kk) *Vessel-operating costs* means any of the following expenses incurred by an ocean common carrier: Salaries and wages of officers and unlicensed crew, including relief crews and others regularly employed aboard the vessel; fringe benefits; expenses associated with consumable stores, supplies and equipment; vessel fuel and incidental costs; vessel maintenance and repair expense; hull and machinery insurance costs; protection and indemnity insurance costs; costs for other marine risk insurance not properly chargeable to hull and machinery insurance or to protection and indemnity insurance accounts; and charter hire expenses.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984, as amended at 50 FR 6944, Feb. 19, 1985; 61 FR 11574, Mar. 21, 1996]

## Subpart B—Scope

### § 572.201 Subject agreements.

(a) *Ocean common carrier agreements.* This part applies to agreements by or among ocean common carriers to:

- (1) Discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
- (2) Pool or apportion traffic, revenues, earnings, or losses;
- (3) Allot ports or restrict or otherwise regulate the number and character of sailings between ports;
- (4) Limit or regulate the volume or character of cargo or passenger traffic to be carried;
- (5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;
- (6) Control, regulate, or prevent competition in international ocean transportation; and
- (7) Regulate or prohibit their use of service contracts.

(b) *Marine terminal operator agreements involving foreign commerce.* This

part applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers to:

- (1) Discuss, fix, or regulate rates or other conditions of service; and
- (2) Engage in exclusive, preferential, or cooperative working arrangements.

[49 FR 45351, Nov. 15, 1984; 49 FR 48927, Dec. 17, 1984]

### § 572.202 Non-subject agreements.

This part does not apply to the following agreements:

- (a) Any acquisition by any person, directly or indirectly, of any voting security or assets of any other person;
- (b) Any maritime labor agreement;
- (c) Any agreement related to transportation to be performed within or between foreign countries;
- (d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States;
- (e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States;
- (f) Any agreement exclusively and solely among non-vessel-operating common carriers;
- (g) Any agreement exclusively and solely among ocean freight forwarders.

## Subpart C—Exemptions

### § 572.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in substantial reduction in competition, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing, or other requirements of the Act and this part, any party to an exempt agreement may

file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 16 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) *FEDERAL REGISTER notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the FEDERAL REGISTER. The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, D.C.; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Economics and Agreement Analysis for inspection during the term of the agreement and

for a period of three years after its termination.

[49 FR 45351, Nov. 15, 1984, as amended at 59 FR 67230, Dec. 29, 1994; 61 FR 11574, Mar. 21, 1996]

**§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.**

(a) A non-substantive agreement or a non-substantive modification to an existing agreement is an agreement between ocean common carriers and/or marine terminal operators, acting individually or through approved agreements, which:

(1) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment and supplies, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals.

(2) Reflects changes in the name of any geographic locality stated therein; the name of the agreement or the name of a party to the agreement; the names and/or numbers of any other section 4 agreement or designated provisions thereof referred to in an agreement; the table of contents of an agreement; the date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or renumbers or reletters articles or sub-articles of agreements and references thereto in the text.

(3) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee.

(b) A copy of the non-substantive agreement or modification shall be submitted for information purposes in the proper format but is otherwise exempt from the notice and waiting period requirements of the Act, and of this part.

(c) Parties to agreements may seek a determination from the Director, Bureau of Economics and Agreement Analysis as to whether a particular modification is non-substantive.